अण्डमान तथा निकोबार राजपत्र

Andaman And Nicobar Gazette

सत्यमेव जयते

असाधारण

EXTRAORDINARY

प्राधिकार से प्रकाशित

Published by Authority

सं. 23, पोर्ट ब्लेयर, मंगलवार, 10 फरवरी, 2009

No. 23, Port Blair, Tuesday, February 10, 2009

अण्डमान तथा निकोबार प्रशासन
ANDAMAN AND NICOBAR ADMINISTRATION
सचिवालय/SECRETARIAT

NOTIFICATION

Port Blair, dated the 10th February, 2009.

No. 23/2009/F.No.3-454/2006-Labour.—In pursuance of sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Act No.14 of 1947) read with Notification No.LR-1(59)/55 dated 13th December, 1955 of the Govt. of India, Ministry of Labour and A & N Administration Notification No. 144/2008/F. No. 17-2/2007-Labour dated 7/10/2008, the Secretary (Lab), Andaman and Nicobar Administration, hereby orders for publishing the following Award given by the Labour Court, Andaman and Nicobar Islands, Port Blair against the reference made to the Industrial Tribunal for adjudication vide Administration's Notification No. 3-454/2006- Labour dated12/9/2007 in the matter of an Industrial Dispute between the Chief Engineer, APWD, Port Blair and workman Smti Mansi Rani Poddar, DRM represented by Chairman, Andaman & Nicobar Govt. Employees & Workers Federation, Port Blair over the non extending 1/30th of wages + DA.

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT
ANDAMAN AND NICOBAR ISLANDS

Present: Shri Mir Dara Sheko, Presiding Officer,
Labour Court, Port Blair

I.D. Case No.9 of 2007.

Smti Mansi Rani Poddar	**…**	**First Parties**
Versus		
Chief Engineer **APWD, Port Blair**	**…**	**Second Party**

Friday the 16th day of January, 2009

JUDGEMENT

The instant I.D. case arises out of the reference made by the Assistant Secretary (Labour) under the order of the Lieutenant Governor A & N Islands in exercise of the powers conferred under Sub-section 1 of section 10 read with Sub-section 5 of section 12 and section 12 of sub-section (2-A) of section 10 of the Industrial Dispute Act, 1947 with reference to notification dated 12th September 2007 in connection with F.No. 454-2006/Labour for adjudication on the following points:-

1. "Whether the action on part of the Chief Engineer, APWD, Port Blair in conferring Temporary status under casual labourers (Grant of Temporary status and regularization) scheme, 1993 to Smti Saida Banu, Miss Shikha Achari, Vidya Mala, Miss Sree Latha, Smti Mansi Rani Poddar, a senior workman is legal and justified ? If not, what relief the concerned workman is entitled to ?"

2. Whether the demand of the Chairman, Andaman Nicobar & Govt. Employees and Workers Fedration, Port Blair for payment at the rate of 1/30th of pay at the minimum of the relevant pay scale plus dearness allowance to Smti Mansi Rani Poddar as per the office memorandum No. 49014/2/86/Estt. © dated 7/6/1988 of the Govt. of India, Ministry of Personnel Public Grievances and Pension, New Delhi is legal and justified ? If so, what relief the concerned workman is entitled to ?

Decision with reasons

The First party Smti Mansi Rani Poddar submitted the statement of Claim, and on its basis it is submitted before me that the First party though basically was daily rated mazdoor but her service was utilized by the Second party as a typist since November 1994 and although some other casual labour were employed by the Second Party she has been terminated w.e.f. 5/2/97 without any notice under section 25 F of the I.D. Act.

It is further averred that this court by adjudicating previous I.D. case No. 21/98 held the referred action of the Second Party as illegal and unjustified and the First party was accordingly directed to be reinstated in the service as Daily Rated Mazdoor on and from the dated on which she was terminated and for that reason entitlement of all back wages also was directed.

Further averment is that the First party was accordingly reinstated by the second party w.e.f. 21/3/2001 and so according to her she got continuity in service since her engagement w.e.f. November 1994.

According to the First party since many juniors who were/are daily rated mazdoors, but although they have been regularized by providing scale benefits between 1999 to April 2002, but the first party though still has been working under the second party on daily rated basis and although her services is taken as a clerk she has not been regularized from the date while her juniors were re-regularised and so according to her, grant of 1/30th of pay+ Dearness Allowance from the date of engagement till the date of granting temporary status is to be allowed.

The second party by offering written objection on their part and also by offering written argument during course of final hearing submitted that the first party initially was engaged as DRM in November 1994 and she was continued in the same capacity to work under the second party till 5/2/1997. Further on the basis of award passed in by previous I.D. case No. 21/99 she was again engaged in same daily rated mazdoor capacity by making payment also all back wages in compliance to the award passed by this court, but the relief as sought for by the first party being not within the scheme notified on 10/9/1993 and since always the status of the employment of the first party was temporary on daily rated basis, the first party is not entitled to get any relief and the I.D. case accordingly is liable to be dismissed.

So by taking the case and counter case on record the fact remains as admitted that the first party was employed by the second party by giving only temporary status on daily rated basis. So the question now arises as to whether by the order of this Labour Court, the second party can be compelled to extend the relief as sought for by the first party. By this time apart from other decisions we have already come across with the judgement of the Hon'ble Supreme Court of 5 Judges Bench reported in (2006) 4 Supreme Court Cases page 1 (State of Karnataka and others

versus Uma Devi and others), wherein the Hon'ble Apex Court also by considering the provisions of labour law has been pleased to formulate the observation and I do like to quote a few lines of the said decision viz.:—

"While directing that appointments, temporarily or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for sometime and in some cases for a considerable length of time. It is not as if the person, who accepts an engagement either temporarily or casual in nature is not aware of the nature of his employment. He accepts the employment with open eyes. It may by ture that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accept whatever he gets. But on that ground alone it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that the person, who has temporarily or casually got employed, should be directed to be continued permanently. By doing so it would be creating another mode of public appointment, which is not permissible.

Their Lordships further have been pleased to observe, "Merely because a temporary employee, or a casual wage worker is continued for a time beyond the term of his appointment, he would not be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection a envisaged by the relevant rules (vide page 5 of the reported decision). In page 6 of said decision it is again observed by their Lordships viz, "Obviously, the state is also controlled by economic consideration and financial implication of any public employment. The viability of the department or the instrumentality or of the project is also of equal concern of the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. The courts cannot impose on the state a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly. A direction to give permanent employment to all those, who are being temporarily or casually employed in a public sector undertaking may cause the financial burden on such undertaking to become so heavy that the undertaking itself may collapse under its own weight. It is not as if this has not happened. So, the court ought not to impose a financial burden on the state by such directions, as such directions may turn counterproductive."

So my examining the evidence and materials on record on which there is no dispute from either side, I find that since the employment of the first party was/is purely of temporary status on daily rated basis and since the first party did not achieve such employment by coming through any approved process of selection like all permanent posts under the government tribunal so on and so forth, the institution of the second party therefore, cannot be made burdened financially or otherwise by the order of this court, because a status, temporary in nature, cannot achieve a status of permanent nature as a matter of right.

The first party also could not produce any such document by which the second party had ever issued any order for extending the relief as sought for by her. So the judgment of the Hon'ble Apex Court under reference that too of 5 Hon'ble Judges of constitution bench being now the law of the land having binding effect upon everybody concerned within the country, in absence of any approved or legal contract the claim of the first party for getting regular employment as well as grant of pay and DA as sought for cannot be enforced within the ambit of this case.

Be it mentioned that within the ambit of the grievance of reference the question of any notice under section 25-F under ID Act being not relevant, I refrained myself from making any discussion to that angle.

Thus by assessing the case, counter case and the available evidence, I hold that the action on the part of the Chief Engineer, APWD, Port Blair in conferring temporary status under casual

Labourers to some others as referred to in the reference w.e.f. 29/4/2002 at the option of the second party by ignoring the claim of the first party (though she might be a senior workmen) is neither illegal nor unjustified and so the first party workmen is not entitled to get any relief and consequently the second point as a matter of right being also not available to the first party, she also is not entitled to get the relief towards payment at the rate of 1/30th of pay at the minimum of the relevant pay scale + dearness allowance as sought for, because the DRM like the first party under the order of Labour Court should not expect any compulsive order by which the second party can be supposed to be burdened financially.

In effect both the points as referred to above having been adjudicated the I.D. case is liable to be dismissed.

Hence, it is,

ORDERED

that the I.D. case is hereby dismissed on contest by holding that the action on the part of the Chief Engineer, APWD in conferring temporary status under casual labourers scheme 1993 to Smti Saida Banu, Miss Shikha Achari, Vidya Mala, Miss Sree Latha, Smti Vijay Laxmi etc. w.e.f. 29/4/02 by ignoring the claim of Smti Mansi Rani Poddar is neither illegal nor un-justified and so the first party Mansi Rani Poddar is not entitled to get the relief and also the demand of the Chairman, Andaman and Nicobar & Govt. Employees & Workers Federation, Port Blair for payment at the rate of 1/30th of pay at the minimum of the relevant pay scale plus dearness allowance to Smti Mansi Rani Poddar is neither legal nor justified and so the first party as a matter of right is also not entitled to get financial relief as sought for.

Issue copy of such judgement to the Lieutenant Governor, Andaman & Nicobar Islands through Assistant Secretary (Labour), A & N Administration, since the reference under notification dated 12/9/2007 in connection with F. No. 3-454/2006/Labour is hereby adjudicated.

Typed at my dictation & corrected by me.

Sd/-
P.O.

Sd/-
(Mir Dara Sheko)
Presiding Officer
Labour Court
Andaman and Nicobar Islands
16.1.2009
By order of the Secretary (Labour)

Sd/-
(P. Alvi)
Assistant Secretary (Labour).

MGPPB—23/Gazette/2009— 50 Copies (YSN)